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ATTORNEY DOCKET NO. 11470BAUS01U (NORT10-00350)
U.S. SERIAL NO. 09/577,292
PATENT

REMARKS

Claims 1-12, 14-43, 45-61 and 63-65 are pending in the application.

Claims 1-10, 14-41, 45-61 and 63-65 have been rejected.

Claims 11, 12, 42 and 43 have been objected to.

Claims 1-4, 11-12, 19-21, 23, 26, 32-35, 42-43, 48-50, 52-55, 61 and 63 have been amended,
as set forth herein.

New Claim 66 has been added.

I. TELEPHONIC EXAMINER INTERVIEW

On January 25, 2005, the undersigned counsel ("Applicant's representative") and the Examiner discussed the subject matter of the present application and the Cheung reference. The discussion focused on the second and third main elements of Claim 1 (as the other independent Claims included similar elements) and whether Cheung disclosed these features. No agreement was reached at that time, however, Applicant's representative stated that an after final amendment and response would be filed within two months of the final Office Action which would be focused on these two elements of the claims, and the Examiner agreed to re-review the Cheung reference and consider Applicant's after final amendment and response.

II. CLAIM OBJECTIONS

Claims 1, 11, 32-33, 42, 61 and 63 were objected based upon various informalities. Though the objections are respectfully traversed, Applicant has amended these claims, as well as other claims

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(as identified), solely in efforts to overcome the noted informalities and/or to place the claims in better form for appeal.

III. REJECTION UNDER 35 U.S.C. § 102

Claims 1-7, 14-17, 19-38, 45-46, 48-61 and 63-65 were rejected under 35 U.S.C. § 102(e) as being anticipated by Cheung (US Patent No. 6,515,964)¹. The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Independent Claims 1, 32, 61 and 63 recite method, apparatus and article in which a throughput measurement request is transmitted that causes a trace to propagate via a path between the origination terminal and the destination terminal, and in response to the trace, information is received identifying one or more network resources on the path. Applicant hereby provides the full language of Claim 1 (Claims 31, 61 and 63 have similar elements) with at least two main elements (identified in bold type) which the Applicant respectfully submits are not disclosed by Cheung:

¹ Applicant notes that this rejection refers to Claims 1-10, 14-41, 45-61 and 63-65; however, Applicant believes that the Office Action intended for only Claims 1-7, 14-17, 19-38, 45-46, 48-61 and 63-65 to be identified and so rejected.

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1. (as amended) A method of admitting calls over a network, comprising:

receiving a call request to establish a call, the call request defining a throughput requirement and comprising an origination address for identifying an origination terminal and an identifier for identifying a destination terminal;

transmitting a throughput measurement request, the throughput measurement request causing a trace to propagate via a path between the origination terminal and the destination terminal;

in response to the trace, receiving information identifying one or more network resources on the path between the origination terminal and the destination terminal;

monitoring one or more performance characteristics of the one or more network resources identified to generate a throughput measurement of the path; and

transmitting a call admission response to the origination terminal when the throughput measurement at least substantially matches the throughput requirement of the call request.

First, Cheung does not transmit a throughput measurement request that causes a trace to propagate via a path between the origination terminal and the destination terminal. Second, Cheung does not disclose that, in response to the trace, information is received which identifies one or more network resources on the path between the origination terminal and the destination terminal (or that these identified network resources - specifically identified as forming part of the route/path - are monitored to generate a throughput measurement).

Though Cheung's gateways do accumulate network performance parameters (Cheung, Col. 5, lines 65 thru Col. 6, lines 4; Col. 7, lines 34-39; Col. 8, lines 42-50), this description does not disclose (or even appear to be materially relevant to) the two above-identified elements of Claim 1. In fact, Cheung appears to monitor global or overall parameters of a network (current and projected

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“traffic”, call delay, packet loss, error rate) upon which to base the call admission decision. Cheung, Col. 7, lines 14-33; Col. 8, lines 42-50. Thus, in Cheung, which path the data packets will traverse between the source and destination (in the packet network) appears to be irrelevant - only the overall network operating characteristics seem important. In contrast, Applicant additionally teaches that it is important to identify which network resources (e.g., gateways, routers, paths, links, terminals, etc.) will be utilized in the path(s) between the origination terminal and destination terminal. With this information, the Applicant is able to make the call admission decision for the anticipated path (or paths) of the call.

In sum, upon a detailed review of Cheung, Cheung fails to disclose or describe at least these two elements (as identified above) of independent Claim 1 (and independent Claims 32, 61 and 63, as well as the dependent Claims).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-7, 14-17, 19-38, 45-46, 48-61 and 63-65.

IV. REJECTION UNDER 35 U.S.C. 103

Claims 8-10 and 39-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheung. Claims 18 and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheung in view of Vargo (US Patent No. 6,356,545). These rejections are respectfully traversed.

Claims 8-10 and 18 depend from independent Claim 1, and Claims 39-41 and 47 depend from independent Claim 32, and incorporate the features/elements recited in their respective base

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claims. Thus, for the same reasons given above with respect to the §102 rejection of independent Claims 1 and 32, the Cheung and Vargo references, either alone or in combination, do not disclose, teach or suggest all the features/elements of Claims 8-10, 18, 39-41 and 47 and, therefore, a prima facie case of obviousness has not been established. Vargo fails to cure the noted deficiencies of Cheung.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejections of Claims 8-10, 18, 39-41 and 47.

V. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

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If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: _____

1/27/2006



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